

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

SBC Communications, Inc.,)	
SBC Delaware Inc.,)	
Ameritech Corporation,)	
Illinois Bell Telephone Company)	
d/b/a Ameritech Illinois, and)	
Ameritech Illinois Metro, Inc.)	
)	
Joint Application for Approval of the)	Docket No. 98-0555
Reorganization of Illinois Bell)	
Telephone Company d/b/a Ameritech)	
Illinois, and the Reorganization)	
of Ameritech Illinois Metro, Inc.)	
In Accordance With Section 7-204 Of)	
The Public Utilities Act and for All)	
Other Appropriate Relief)	

**McLEODUSA TELECOMMUNICATIONS SERVICES, INC.'S
BRIEF ON EXCEPTIONS TO THE
HEARING EXAMINERS' PROPOSED ORDER**

I. INTRODUCTION

This proceeding was reopened on the Commission's own motion for the consideration of several issues identified by Chairman Mathias and Commissioners Kretschmer and Harvill. Additional evidence was prefiled and hearings were held to address those issues. On August 10, 1999, the Hearing Examiners' Proposed Order on Reopening was served on the parties. McLeodUSA Telecommunications Services, Inc. ("McLeodUSA" or the "Company") takes exceptions to the Hearing Examiners' rejection of the issues it has raised on reopening.

As discussed in more detail below and in McLeodUSA's Brief on Reopening, McLeodUSA has experienced numerous problems competing with Ameritech for

local service. These problems include payments for reciprocal compensation, imposition of exorbitant special construction charges, volume discounts and other resale issues. The Proposed Order fails to even note SBC's and Ameritech Illinois' ("Joint Petitioners" or "SBC-Ameritech") response on these issues, but nevertheless reaches the conclusion that none of the issues raised by McLeodUSA need be addressed in this docket. As discussed below, each of these issues is relevant and should be considered by the Commission in this docket when ruling on whether and in what circumstances to allow the proposed merger.

II. ARGUMENT

A. Reciprocal Compensation

Although Ameritech claims to be in compliance with the Commission's orders requiring payment of reciprocal compensation on Internet-bound traffic, Ameritech does not in fact pay reciprocal compensation to all terminating CLECs with whom it interconnects. The evidence shows that Ameritech is paying reciprocal compensation on Internet-bound traffic only if the terminating company has been a party to a successful complaint against Ameritech on this issue. Carriers like McLeodUSA who have not spent the time and money to litigate such an action against Ameritech are not receiving reciprocal compensation payments from Ameritech. Unless Ameritech is required to make such payments, McLeodUSA will be forced to file a complaint and litigate exactly the same issues that have already

been decided by the Commission and the 7th Circuit. (McLeodUSA Ex. 1, pp. 3-4)
Ameritech's conduct is anti-competitive and discriminatory against McLeodUSA.

Ameritech's sole response on this issue was that the parties are in discussions and this is a legal which has not yet been resolved. (SBC/Am Ex. 12.1, p. 20) This response is insufficient. The Commission now has the ability to put this issue to rest once and for all. It should do so in the final order in this case as a means of ensuring that local competition can develop in Illinois after the merger.

B. Special Construction Charges

Ameritech does not provide unbundled loops to McLeodUSA in a way that furthers the goal of local exchange competition. Special construction charges are a particular problem for McLeodUSA and other CLECs. (See ACI Ex. 1.0, p. 9) Special construction charges are sometimes levied when unbundled loops are ordered from Ameritech. These non-recurring charges can amount to thousands of dollars depending upon the facility requested. This is true even though Ameritech imposes no charge at all on its end use customer when it provides the same service to the same location. Special construction charges are often assessed when the loop must be conditioned for certain services, or when the customer is served through the use of a digital loop carrier. These circumstances arise in the provision of xDSL services. Imposition of special construction charges is a competitive barrier to competition for xDSL services. (McLeodUSA Ex. 1, pp. 4-6)

Joint Petitioners contend that these special construction charges are appropriate since they result in the “cost causer” paying. (SBC/Am. Ex. 12.1, p. 16)

The actual result of this practice is the cost causer pays twice. Under the forward-looking TELRIC pricing standards used to determine rates for unbundled loops, loop costs already include the costs to unbundle the loop. (McLeodUSA Ex. 1, pp. 4-6)

SBC witness Appenzeller testified that he did not know whether the costs recovered through special construction charges, including those for conditioning the loop for xDSL service, are actually included in TELRIC-based UNE prices. (Tr. 2394-95) Mr. Appenzeller conceded that the CLEC does not cause the cost of conditioning the line since conditioning amounts to removing interferers that Ameritech has put on the system. (Id.) The Commission can reach no other conclusion but that special construction charges amount to a windfall for Ameritech and a competitive, discriminatory barrier to CLECs’ entry into the market.

This situation is complicated by Ameritech’s refusal to provide McLeodUSA and other CLECs access to its existing databases which include information about the existence and type of copper facilities, the presence and types of digital loop carrier deployed, and the deployment of equipment such as load coils, taps and repeaters. As a result of this refusal, CLECs have no way of determining in advance whether there will be impediments to using unbundled loops to provide service to a particular customer, or when Ameritech might attempt to apply special

construction charges. (McLeodUSA Ex. 1, p. 5; ACI Ex. 1.0, pp. 10-12) This makes doing business difficult.

C. Volume Discounts

The evidence shows that the wholesale "volume discounts" for Centrex service may be in jeopardy, given Ameritech's tariff language. Since Centrex resale has been one of the primary means by which McLeodUSA has entered the local market, this is a serious issue which could adversely affect McLeodUSA's viability as a local competitor.

Since 1994, McLeodUSA has been providing competitive services in Illinois through the resale of Ameritech's Centrex service. Where McLeodUSA uses Centrex resale, McLeodUSA functions [and is treated by Ameritech] as a single large customer with many different locations. Typically, discounts have been applied to McLeodUSA's usage based on this fact, i.e., that McLeodUSA is a single customer from the standpoint of the bill that Ameritech renders. (McLeodUSA Ex. 1, pp. 6-7)

Ameritech's tariff, however, contains language which arguably contradicts this approach. Specifically, the tariff states that "aggregation of services including usage services, for the purposes of applying volume discounts . . . is permitted for carriers on the same basis it is permitted for Ameritech Illinois' retail customers. Aggregation of services is limited to services under an account provided to a particular Carrier customer's premises." III. C. C. No. 20, Part 22, Section 1, 3rd Revised Sheet No. 1.1. To the extent this language is intended to prohibit

aggregation across McLeodUSA's end-users, the FCC has determined this approach to be "presumptively unreasonable." In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-325, ¶ 953 (August 8, 1996). (McLeodUSA Ex. 1, pp. 6-7)

Ameritech's sole response is that this issue is being addressed in another docket. (See SBC/Am Ex. 12.1, p. 20) Ameritech neither denies that the problem exists nor that it will in the future interpret the aforementioned tariff language in the manner that would foreclose volume discounts. The Commission should make clear in its final order that Ameritech may not interpret this tariff language to prohibit volume discounts across end-use customers of a CLEC. Moreover, to ensure there is no problem in the future, Ameritech should be required to remove the aforementioned language from its tariff.

D. Treatment of Wholesale Customers

The facts surrounding McLeodUSA's entry into the local market in Illinois, and particularly regarding its dealings with Ameritech, raise serious questions about Ameritech's treatment of CLECs and, thus, its commitment to opening the local market to competition.

McLeodUSA began providing service in Illinois through the resale of Ameritech's services in 1994. It was not until 1997, however, that McLeodUSA entered into a resale agreement with Ameritech in Illinois. At the time the agreement was signed, McLeodUSA purchased substantial services from Ameritech out of

Ameritech's retail tariffs. McLeodUSA reasonably believed that entering into a resale agreement with Ameritech would allow it to obtain the wholesale discount on the service but that the service would in all respects remain the same. In other words, McLeodUSA expected that entering into a resale agreement with Ameritech under which it would purchase at wholesale the services it had been purchasing at retail would have no operational implications. McLeodUSA was wrong. (McLeodUSA Ex. 1, pp. 7-9)

In the two years following execution of the resale agreement, McLeodUSA has been in a constant struggle with Ameritech to implement the agreement. For example, Ameritech has refused to provide McLeodUSA Voice Messaging after execution of the agreement even though McLeodUSA had been purchasing the same service for resale prior to entering into the agreement. To be clear, the dispute did not involve pricing, but rather whether the service had to be provided at all. Ameritech simply refused to continue to provide the service to McLeodUSA even at the same retail rates that any non-carrier customer would pay. (McLeodUSA Ex. 1, pp. 8-9)

Further, McLeodUSA has been alternatively advised at various times since the resale agreement was signed that it would:

- experience reduced levels of support from its Ameritech account team,**
- have longer intervals to secure service, and**

- have to change its network configuration in order to "implement" the resale agreement.

These threats were made even though the service McLeodUSA purchased under the resale agreement was identical to the service it purchased under the retail tariff. (McLeodUSA Ex. 1, pp. 8-9) There can be no reasonable explanation for these problems, and none has been offered.

Rather than addresses these issues head on, Ameritech instead contends that the "voice mail" service is not a "telecommunications service" and therefore Ameritech need not provide it for resale, and in any event, McLeodUSA does not need it any longer. (See SBC/Am Ex. 12.1, p. 20) This response addresses only the tip of the iceberg. Again, what Ameritech does not state is most significant. Ameritech neither denies the facts raised by McLeodUSA nor defends its actions in any way.

McLeodUSA continues to work with Ameritech toward the resolution of these and other issues regarding the resale agreement. The point is that these facts are simply not consistent with a desire on the part of Ameritech for it to adequately meet the needs of its wholesale customers. (McLeodUSA Ex. 1, pp. 7-9) As a result of these problems, McLeodUSA proposes that, if the Commission approves the merger, it should make clear in its order that this type of conduct will not be countenanced and that Ameritech should treat its wholesale customers fairly and reasonably.

III. CONCLUSION AND SPECIFIC EXCEPTIONS

The problems described herein must be resolved in order for effective local competition to develop in Illinois. If the Commission determines to approve the merger, it should impose the conditions described below to ensure that the goal of effective local competition is achieved.

Specifically, the paragraph beginning on page 114 and carrying over to page 115 of the Proposed Order entitled “Commission Analysis and Conclusion” in the “Enforcement: Liquidated Damages Provisions” section should be revised as follows:

We conclude that Joint Applicants’ commitment to import to Illinois the “Texas plan” for performance measures and incident-based liquidated damages provisions is responsive to our question and adequately addresses some of our concerns. It also represents a procompetitive benefit to Illinois CLECs and end-users which would not exist without the merger. Our goal is to ensure that any conditions imposed in this Order are not illusory, but rather are specific and enforceable, and that enforcement measures are adequate to ensure full compliance with the conditions. ~~The Texas plan and related commitments achieve these goals. In addition, we note that the FCC likely will impose performance and liquidated damages condition of its own which, if they exceed the damages available under the Texas plan, would also be available to CLECs in Illinois to the extent of any overage. Thus, Illinois CLECs will have the best of both worlds. With the proper incentives in place, we can be reasonably assured that the conditions we impose will be fulfilled and that CLECs and end-users will reap the benefits. Joint Applicants’ commitments create such incentives. However, several CLECs have raised issues regarding Ameritech’s performance which cause the Commission to conclude that additional measures are needed to ensure that local competition will develop and that the combined SBC/Ameritech will comply with all~~

regulatory requirements. The Commission concludes that the following conditions should be imposed on approval of the merger:

- Applicants must pay reciprocal compensation to all terminating carriers on all Internet-bound traffic. Applicants shall do so with respect to all such traffic terminated on each such CLECs' facilities as of the effective date of the interconnection agreement with each such carrier.
- Applicants shall not impose special construction charges for the provision of unbundled network elements unless: (1) it can be shown that the costs to be recovered through such special construction charges are not already being recovered through the TELRIC UNE pricing for the loop, and; (2) Applicants would charge their end use customer the same special construction charges if Applicants provided the same service to that end use customer.
- Applicants should provide to CLECs 24 hour on-line access to a computer database which contains information concerning the technical make-up of loops on its system, including physical medium of the loop (i.e., copper or fiber); loop length in equivalent 26 gauge; the length and location of bridged taps; and the presence of load coils, repeaters, DLC systems or DAMLS.
- Ameritech shall modify III. C. C. No. 20, Part 22, Section 1, 3rd Revised Sheet No. 1.1. to eliminate the language that calls into question the future availability of volume discounts to carriers. Applicants shall not include any such limitations in future tariff filings.
- Applicants shall treat their wholesale customers fairly and reasonably, and not impose any burdens or service limitations on wholesale customers that prevent those wholesale customers from providing

**services comparable to those which are provided
by Applicants.**

It is only if these changes are incorporated into the Commission's final order in this proceeding that Illinois consumers will finally have the chance of experiencing the benefits of local competition.

Respectfully submitted,

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